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TO AMEMBASSY MEXICO PRIORITY

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SUBJECT: CLAIM OF CONSULAR IMMUNITY - RICARDO SILVA ARIAS,
MEXICAN CONSULAR OFFICIAL AT LOS ANGELES

REF: MEXICO 7620

1. US/MEXICO CONSULAR RELATIONS ARE GOVERNED BY 1963
VIENNA CONVENTION ON CONSULAR RELATIONS AND 1943 BILATERAL
US/MEXICO CONVENTION ON CONSULAR OFFICERS.

2. FOLLOWING IS EXCERPT EMBODIED IN ARTICLE 41 (3) OF
VIENNA CONVENTION RELATING TO CONSULAR IMMUNITY:

QUOTE: IF CRIMINAL PROCEEDINGS ARE INSTITUTED
AGAINST A CONSULAR OFFICER, HE MUST APPEAR
BEFORE THE COMPETENT AUTHORITIES. NEVERTHELESS,
THE PROCEEDINGS SHALL BE CONDUCTED WITH THE
RESPECT DUE TO HIM BY REASON OF HIS OFFICIAL
POSITION....WHEN, IN THE CIRCUMSTANCES MENTIONED
IN PARAGRAPH 1 OF ARTICLE RELATING TO THE
LIABILITY OF CONSULAR OFFICERS TO ARREST OR
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DETENTION PENDING TRIAL IN THE CASE OF A GRAVE CRIME (ROUGHLY EQUIVALENT TO A FELONY), IT HAS BECOME NECESSARY TO DETAIN A CONSULAR OFFICER, THE PROCEEDINGS AGAINST HIM SHALL BE INSTITUTED WITH A MINIMUM OF DELAY. END QUOTE.

3. ARTICLE 2, PARAGRAPH 1 AND 2 OF THE US/MEXICO CONSULAR STATES THAT A CONSULAR OFFICER IS SUBJECT TO ARREST WHEN CHARGED WITH A CRIME OTHER THAN A MISDEMEANOR, AND WHICH REQUIRES HIS ATTENDANCE AT COURT AS A WITNESS IN A CRIMINAL CASE.

4. THEREFORE, UNDER BOTH TREATIES A CONSULAR OFFICER WHO IS CHARGED AS A DEFENDANT IN A MAJOR FELONY CASE IS REQUIRED TO APPEAR BEFORE THE COMPETENT AUTHORITIES AND, FAILING TO DO SO, IS SUBJECT TO ARREST.

5. THE DISTRICT ATTORNEY'S OFFICER IN LOS ANGELES INFORMED THE DEPARTMENT THAT THE COURT IN QUESTION WAS PREPARED TO TAKE THE NECESSARY MEASURES, INCLUDING EXERCISE OF ITS SUBPEONA AND BENCH WARRANT JURISDICTION, IN ORDER TO COMPEL CONSUL SILVA ARIAS' APPEARANCE FOR HIS TRIAL, AND HAS ORDERED HIS ATTORNEY TO APPEAR WITH DEFENDANT. DEPARTMENT HAS BEEN INFORMED THAT A HEARING HAS BEEN SET FOR SEPTEMBER 20.

6. IN ANY EVENT JUDGE IN CASE WILL BE INDIVIDUAL ULTIMATELY RESPONSIBLE FOR DETERMINING CLAIM TO CONSIDER IMMUNITY. SILVA'S CLAIM THAT DEPARTMENT HAD PRESENTED A STATEMENT TO LA DISTRICT ATTORNEY THAT "SILVA IS NOT IMMUNE" REFLECTS MISUNDERSTANDING ON HIS PART. WHAT DEPARTMENT DID INFORM DA, IN RESPONSE TO SPECIFIC QUESTION, IS THAT, AS CAREER FOREIGN CONSULAR OFFICER, SILVA "HAS NO IMMUNITY FROM PROSECUTION FOR A FELONY." DEPARTMENT WAS NOT ASKED, AND CONSEQUENTLY DID NOT ADDRESS, QUESTION WHETHER, IN SUCH A CASE, SILVA COULD ASSERT "OFFICIAL ACTS" IMMUNITY AS A POSITIVE DEFENSE. SUCH A PLEA IS AVAILABLE TO HIM, AND IT WOULD BE FOR THE COURT TO DETERMINE ITS VALIDITY BASED ON THE FACTS AND ARGUMENT TO BE PRESENTED ON SEPTEMBER 20. SHOULD THE COURT RULE THAT ACTS WERE INDEED "OFFICIAL" IT LIMITED OFFICIAL USE

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WOULD YIELD JURISDICTION.

7. THE MEXICAN EMBASSY IN WASHINGTON CONTENDS THAT SILVA SHOULD BE ENTITLED TO CONSULAR IMMUNITY ON GROUNDS THAT HE WAS MERELY CARRYING OUT HIS FUNCTIONS AS A CONSULAR OFFICER IN REFERRING CLIENTS FOR LEGAL SERVICES. EMBASSY HOWEVER INDICATED THAT THEY WOULD BE WILLING TO

RECALL SILVA IF THIS SHOULD BE ONLY WAY TO AVOID INVOLVING
SILVA IN FURTHER SCANDAL. (DEPT IS INFORMED PUBLICITY
ON AFFAIR HAD BROKEN IN LA TIMES PRIOR TO INDICTMENT AND
HAD PROBABLY LED TO GRAND JURY ACTION.)

8. DISTRICT ATTORNEY'S OFFICE INDICATED THAT FOR SILVA
TO FLEE PRIOR TO HEARING COULD TAINT HIM AS GUILTY AND
FAILURE TO APPEAR IN COURT MIGHT RESULT IN ISSUANCE OF
WARRANT. DISTRICT ATTORNEY'S OFFICE ADDED THAT SHOULD
SILVA BE OFFICIALLY RECALLED, IT WOULD PROBABLY PROCEED
WITH CASE AGAINST HIM.

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